Supreme Court, U.S.
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NO.94-735

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1993

RICHARD ROCKWOOD,

Petitioner,

v.

BRIAN O'CONNELL and SHARON HILL,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL SECOND APPELLATE DISTRICT DIVISION SIX

REPLY BRIEF OF PETITIONER

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I

RESPONDENTS' ARGUMENTS BEG THE QUESTION

BEFORE THIS COURT.

Respondents insist that there is no

substantial federal question to be decided, because the Court of Appeal simply agreed with the trial court that Rockwood failed to show that retaliatory acts had occurred within the statute of limitations.

Respondents state that

> "The only issue before the Court of Appeal that is pertinent to the Petition was whether the trial court properly held that Petitioner failed to present enough evidence of violations of 42 U.S.C. Sec.1983 by Respondents during the applicable limitations period to allow the jury to decide the case." Respondents' Brief ("RB") 18.

Not so. The principal issue on appeal in the state court as it is the sole issue before this Court is whether

Mr. Rockwood could introduce the entire 5-1/2 year campaign of harassment in order to prove acts within the limitations period were retaliatory, to prove context, retaliatory intent, the history of his job, circumstances leading to the abolishment of not only the Vehicle Specialist job Mr. Rockwood held when he left County employment in June 1987, but also the job which he had held prior to being demoted to Vehicle Specialist, that of Equipment Superintendent, and the pervasiveness and duration of the harassment he was forced to undergo because he opposed and tried to stop government corruption.

The Court of Appeals acknowledges that was Mr. Rockwood's principal issue on appeal in its ruling at APP.08-09. The argument advanced by Respondents to this

Court is what the Court of Appeals ruled [APP. 08-09]. Both the argument and the ruling are based on "tail-wagging-dog" reasoning. RB 18-22.

It is unfair to conclude that Mr. Rockwood had not established retaliatory acts within the statute of limitations period without looking at the entire history of those acts.

Mr. Rockwood, for example, was not permitted to prove the complete factual bases for his repugnance at being assigned to work under the supervision of Frank Hawthorne, who had not only been his subordinate, but was the very individual whose corrupt activities he had been trying to rein in for years. APP.92, 96, 101-104.

He was not permitted to prove that in 1984, water in a cooler in the office he

shared with a coworker had been contaminated, and that he and six others had to go to the hospital to insure they had not been poisoned. APP.103-104.

He was not allowed to prove that his suspicions that Hawthorne had played a role in poisoning the water were validated when Hawthorne testified at his deposition some seven years later that it was he who provided the flourescene tablet to another employee who placed it in the water cooler, APP. 104.

Rockwood was not allowed to prove that after one of his former supervisors and defendants, Charles Wagner, told him to move his car from the parking lot, and he did not do so immediately, his new tires were punctured with holes. APP.106. And that somehow Respondent Hill learned about his car being in the parking lot and

also ordered him to remove the car. APP.106-107.

He was not permitted to prove the almost daily onslaught of retaliatory memoranda, disciplinary action, and unjustified complaints Respondents Hill and O'Connell took or made from the moment they began to supervise him in 1984, or that Respondent Hill had requested other employees to spy on Rockwood, or that she and Hawthorne attempted to make him work in a tiny, filthy, and unsafe trailer, or that he was the only supervisor assigned to work in a trailer, or that Respondent Hill made him report his whereabouts to Hawthorne, Rockwood's former subordinate, while imposing this requirement on no other employee at Rockwood's level. APP.108-114.

Respondents, like the Court of Appeal

[at APP. 8-9], engage in the very kind of reasoning that Justice Gilbert said could happen if an employee were not permitted to present the entire history of the workplace harassment and retaliation in Accardi v. Superior Court (1993) 17 Cal.App.4th 341, 350, and that is, the trier of fact might easily conclude that acts examined in isolation from other acts connected to them are nondiscriminatory, and therefore legitimate.

The Court of Appeal was unwilling to let the trial court force Ms. Accardi to limit her case only to those acts which occurred within the limitations period for fear those acts might appear nondiscriminatory and really were, but was willing to let the trial court do so with respect to Rockwood. To say that the acts occurring within the limitations period

were not retaliatory is to beg the issue. The Court cannot know for sure -- from its own reasoning in Accardi -- whether they were, because the trial court denied Rockwood the opportunity to present background evidence to explain present patterns of behavior, Malhotra v. Cotter & Co., 885 F.2d 1305 (7th Cir. 1989).

Finally, the Court of Appeal did bar constructive termination-hostile work environment cases in Sec.1983 cases by implication, contrary to Respondents' argument at RB 17-22.

As already stated in the Petition at 13, if Rockwood had filed one year after being constructively terminated, he could have litigated only the fact that he was terminated, not the circumstances leading to his termination, since those circumstances would all have occurred

outside the limitations period.

The Court of Appeals offered no explanation for its disregard of all federal precedent permitting an employee to present acts relevant to his or her case occurring outside the limitations period, nor have Respondents.

We request that the Court grant our Petition for Writ of Certiorari.

Patricia J. Barry

PATRICIA J. BARRY

Dated at Lomita, California this 30th day of November 1994.